

tory damages to \$100 where the infringer “was not aware and had no reason to believe that his or her acts constituted an infringement of copyright,” is sufficient to protect against unwarranted liability in cases of occasional or isolated innocent infringement, and it offers adequate insulation to users, such as broadcasters and newspaper publishers, who are particularly vulnerable to this type of infringement suit. On the other hand, by establishing a realistic floor for liability, the provision preserves its intended deterrent effect; and it would not allow an infringer to escape simply because the plaintiff failed to disprove the defendant’s claim of innocence.

In addition to the general “innocent infringer” provision clause (2) deals with the special situation of teachers, librarians, archivists, and public broadcasters, and the nonprofit institutions of which they are a part. Section 504(c)(2) provides that, where such a person or institution infringed copyrighted material in the honest belief that what they were doing constituted fair use, the court is precluded from awarding any statutory damages. It is intended that, in cases involving this provision, the burden of proof with respect to the defendant’s good faith should rest on the plaintiff.

REFERENCES IN TEXT

Subsection (g) of section 118 of this title, referred to in subsec. (c)(2), was redesignated as subsection (f) of section 118 by Pub. L. 108–419, § 5(f)(2), Nov. 30, 2004, 118 Stat. 2366.

AMENDMENTS

2004—Subsec. (c)(3). Pub. L. 108–482 added par. (3).

1999—Subsec. (c)(1). Pub. L. 106–160, § 2(1), substituted “\$750” for “\$500” and “\$30,000” for “\$20,000”.

Subsec. (c)(2). Pub. L. 106–160, § 2(2), substituted “\$150,000” for “\$100,000”.

1998—Subsec. (d). Pub. L. 105–298 added subsec. (d).

1997—Subsec. (c)(2). Pub. L. 105–80 substituted “the court in its discretion” for “the court in its discretion”.

1988—Subsec. (c)(1). Pub. L. 100–568, § 10(b)(1), substituted “\$500” for “\$250” and “\$20,000” for “\$10,000”.

Subsec. (c)(2). Pub. L. 100–568, § 10(b)(2), substituted “\$100,000” for “\$50,000” and “\$200” for “\$100”.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–160, § 4, Dec. 9, 1999, 113 Stat. 1774, provided that: “The amendments made by section 2 [amending this section] shall apply to any action brought on or after the date of the enactment of this Act [Dec. 9, 1999], regardless of the date on which the alleged activity that is the basis of the action occurred.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–298 effective 90 days after Oct. 27, 1998, see section 207 of Pub. L. 105–298, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–568 effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions in effect when cause of action arose, see section 13 of Pub. L. 100–568, set out as a note under section 101 of this title.

§ 505. Remedies for infringement: Costs and attorney’s fees

In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney’s fee to the prevailing party as part of the costs.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2586.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

Under section 505 the awarding of costs and attorney’s fees are left to the court’s discretion, and the section also makes clear that neither costs nor attorney’s fees can be awarded to or against “the United States or an officer thereof.”

§ 506. Criminal offenses

(a) CRIMINAL INFRINGEMENT.—

(1) IN GENERAL.—Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18, if the infringement was committed—

(A) for purposes of commercial advantage or private financial gain;

(B) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000; or

(C) by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution.

(2) EVIDENCE.—For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement of a copyright.

(3) DEFINITION.—In this subsection, the term “work being prepared for commercial distribution” means—

(A) a computer program, a musical work, a motion picture or other audiovisual work, or a sound recording, if, at the time of unauthorized distribution—

(i) the copyright owner has a reasonable expectation of commercial distribution; and

(ii) the copies or phonorecords of the work have not been commercially distributed; or

(B) a motion picture, if, at the time of unauthorized distribution, the motion picture—

(i) has been made available for viewing in a motion picture exhibition facility; and

(ii) has not been made available in copies for sale to the general public in the United States in a format intended to permit viewing outside a motion picture exhibition facility.

(b) FORFEITURE AND DESTRUCTION.—When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all infringing copies or phonorecords and all implements, devices, or equipment used in the manufacture of such infringing copies or phonorecords.

(c) FRAUDULENT COPYRIGHT NOTICE.—Any person who, with fraudulent intent, places on any article a notice of copyright or words of the